

Fair Trade Commission

【FTC Newsletter】

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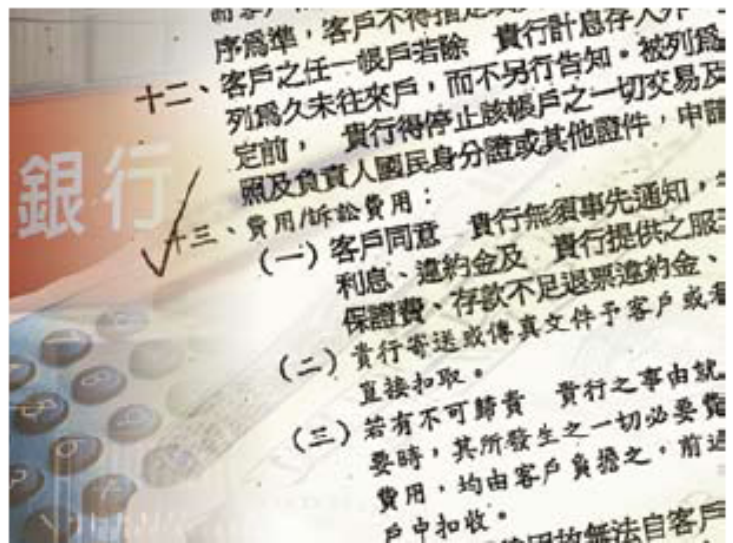
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Financial Institutions shall Comply with the Fair Trade Act when Charging Additional Account Administration Fees

According to the Fair Trade Commission Policy Statements on the Business Practices of the Financial Industry, before charging service fees regardless of how they are referred to, such as “account administration fees,” “transfer fees,” “check ordering fees,” or other service fees, a financial enterprise shall fully reveal the information and cannot directly deduct them. If a financial enterprise fails to disclose



information accordingly such that trading order could be significantly affected, it could be in violation

of Article 24 of the Fair Trade Act.

During April and May 2009, it was reported that TC Bank and Standard Chartered Bank charged account administration fees on savings accounts with a deposit of less than NT\$10,000. The fee would be directly deducted from the account until it reached zero. Other financial institutions also attempted to copy such a strategy. Even though additional charges were suspended as a result of moral suasion by the financial authority, the action to charge additional “account administration fees” harms depositors at large. The FTC intends to conduct a thorough investigation.

Currently, there are 38 domestic financial institutions providing a savings account service. Only 1 foreign bank includes “account administration fees” in its agreement. A total of 13 banks do not include account administration fees in the agreement but reserve the right to levy additional charges; in those agreements, fee changes will either be “announced” in banks/ on their website, or made “in writing.” However, the period between the announcement and the actual fee change differ from one bank to another. While the other 24 banks did not specify “account administration fees” in their agreements, 5 banks did agree to similar fees or charges.

Since additional “account administration fees” may affect the depositors’ decision to stay with the bank, the bank frequently merely makes a public announcement and does not send a written notice to depositors. Depositors may thus not be informed of the fee changes in time. This can be “obviously unfair.” In addition, five enterprises agreed to similar fees or charges, and banks may change “account administration fees” at will, based on this uncertain general provision. The FTC informs financial enterprises of regulations relevant to the Fair Trade Act.

Thus, when opening an account at a financial institution, the public shall pay attention to fee items in the deposit agreement, and carefully examine the method and period for fee changes. For self-protection, the public shall also pay attention to whether the financial institution will disclose fee changes or relevant information in advance after an account is opened.

Price Interference under the Fair Trade Act

On September 5, 2008, a newspaper published a shocking article: “medicine for liver cancer raised from NT\$70 to NT\$500 per capsule; patient: it’s killing me!” The FTC always respects the market mechanism and does not interfere with prices. However, it is abnormal for a single product to increase in price by six or seven times at once. What caused the raise? Was it legal? The FTC initiated an ex officio investigation into the case.

The following are the findings of the FTC after the investigation. The “THADO Capsule” is a new version of the existing “Thalidomide” developed by TTY Biopharm. Thalidomide was syndicated by Chemie Grenthal (West Germany) in 1954. In 1958, it appeared on the market as a sleeping pill. It was considered the safest depressant, being fast, non-addictive, and poison-free. It was also effective in reducing the vomiting caused by pregnancy; thus, it was widely applied in Europe. However, a year later, doctors began to notice that the use of “Thalidomide” in early pregnancy later resulted in deformities that were rare in newborns, such as phocomelia, missing limbs, and defects in bone development. In November 1961, “Thalidomide” was completely recalled and prohibited. However, in the mid 1960s, it was discovered that “Thalidomide” was effective in treating skin tag ache and neural damage caused by erythema nodosum leprosum.

Even though “Thalidomide” is an existing synthetic drug, its effect in cancer treatment has remained unknown until recently. Other aspects, such as its mechanism, applicable diseases, and safety, still await further preclinical and clinical studies. Since 1997, TTY Biopharm has engaged in 24 preclinical and subsequent clinical research programs for more than 12 years. After the said R&D stage, the company’s “THADO” capsule was approved to be applied to the rare disease, “erythema nodosum leprosum” on October 16, 2002. On the other hand, the company has not acquired approval from the Department of Health to apply “THADO” to “multiple myeloma” and “liver cancer.” Since THADO is still a trial drug for those two diseases, it cannot be sold in the market and is therefore supplied at NT\$59.44 per capsule. However, such a price only reflects the “manufacturing costs” and does not include marketing costs (such as training for medical staff, costs related to patient safety, etc.), clinical and R&D costs, as well as other personnel, management, and operating costs, etc.

After “THADO” was approved for “multiple myeloma” on August 17, 2007, shareholders requested that “THADO” capsules be re-priced for business development. Besides, the sustainable operation and the payback period for previous R&D costs were also factors that made the company adjust its price. On the other hand, “erythema nodosum leprosum” is rare domestically. Besides the “THADO” capsule, there are many other alternatives for “multiple myeloma” patients. Thus there is no potential for gaining a market monopoly.

In addition, TTY Biopharm made “THADO” capsules a new drug with new ingredients for “multiple myeloma” in December 2007. After referring to international drug prices, the company applied to the Bureau of National Health Insurance for reimbursement at the median of the international price (NT\$408/capsule). After several meetings with pharmacists and doctors, the said Bureau approved a

reimbursement of NT\$271 per capsule in June 2009 and announced that this would take effect on July 1, 2009. Thus, in regard to those parts covered by national health insurance, patients do not have to make co-payments. In addition, in the non-reimbursement market, TTY Biopharm also adjusted its price to NT\$271 per capsule.

The principle of the Fair Trade Act is to respect market competition. The price is a condition and important tool in seeking trading opportunities; thus, changes in individual product prices shall be determined through free competition. Individual enterprises may determine the price based on demand, supply, and marketing strategy. If the price is formed by the market mechanism, the Commission will respect such a result. However, on exceptional occasions, the price shall be regulated by the Fair Trade Act, for example, where enterprises engage in a concerted action, or where a monopoly improperly determines, maintains, or changes product price or service fees. In this case, TTY Biopharm dramatically increased the price for the “THADO” capsule. The FTC Commissioners’ Meeting resolved the following: the price increase in this case was a reflection of previous R&D costs, market supply and demand, and the company’s marketing strategy. According to available information, the FTC cannot conclude that TTY Biopharm has violated the Fair Trade Act. However, it is unprecedented for a company to increase a product’s price six or seven times on one occasion. Such action is not only criticized by the public but also condemned by consumers (patients), for it seriously damages an enterprise’s corporate image. Thus, an enterprise should exercise more caution in its pricing strategy.

Svenson Violates the Fair Trade Act



During its 928th Commissioners' Meeting on August 19, 2009, the FTC resolved the case on Svenson Global Beauty Int. Management Ltd., BVI (hereinafter referred to as Svenson). Svenson advertised on TV, in magazines, and on websites alleging a "hair miracle in 90 days," and posted the 90-day before and after pictures of Mr. Zhuo and others, as well as their hair care diaries, alleging that "in the past 50 years, we have helped more than 1,000,000 people to improve their hair problem" and that "all products or ingredients have been approved by the Department of Health." It made false, untrue, and misleading representations as to the quality and contents of the products and services in its advertisement; it violated Article 21(1)

and Article 21(3) of the Fair Trade Act which applied *mutatis mutandis* to Paragraph 1 of the same Article. The unlawful activities were suspended and a fine of NT\$1,500,000 was imposed.

The FTC indicated that on TV and in magazines, Svenson advertised its "hair miracle in 90 days." It posted the before (hair loss) and after pictures (thicker and fuller hair) of Mr. Zhuo and others, clearly indicating or suggesting that its service can help a person "regain, revitalize hair" and "treat baldness" in "90 days." On the websites, Svenson posted hair-reviving diaries by certain users, stating that "you will suffer no more hair loss." However, the actual improvement was not as significant if we take a closer look at the before and after photos. In addition, there were no subjective testing reports to support the improvements users experienced. It is uncertain whether the 90 day-before and after photos truly reflected improvements resulting from Svenson's service or courses. In addition, except for product ingredients, Svenson provided no medical theory or clinical tests to prove that the product could achieve the alleged results within 90 days. The advertisements obviously lacked scientific backup and empirical studies. They constituted false, untrue, and misleading representations.

In addition, Svenson published advertisements in magazines alleging that "in the past 50 years, Svenson Hair Care has helped more than 1,000,000 people to improve their hair problem in more than



100 locations around the globe.” The so-called “help consumers improve hair problems,” to the general consumers’ acknowledgement, shall mean “those who have taken classes or received services provided by Svenson have observed a significant improvement.” However, from the year 2005 to May 2009, there were only 16,022 consumers

who had used Svenson’s service domestically. The number was not comparable to that in the advertisement, “to have helped more than 1,000,000 people to improve their hair problems.” Thus, the allegation was unsound. In addition, Svenson made a “statement” on the Internet, where it stated that “all products or ingredients have been approved by the Department of Health.” In fact, the Svenson products sent to the Department of Health for testing were merely “general cosmetics,” and thus they had not been “approved by the Department of Health. ” The said advertisement made false, untrue, and misleading representations as to the quality and contents of products and services, and violated Article 21(1) and Article 21(3) of the Fair Trade Act which applies *mutatis mutandis* to Paragraph 1 of the same Article.

City Noble Online Shopping Violates the Fair Trade Act



During its 905th Commissioners' Meeting on March 11, 2009, the FTC resolved the case on City Noble Online Shopping. City Noble Online Shopping broadcasted an advertisement for the product, "Master Hito." The advertisement made the following representations: "the size of a person's buttocks was 34 3/4 inches 10 minutes before and 32 3/4 inches after using Master Hito;" and "the height of a child was 143 cm before and 144 cm after using Master Hito." The representations as to the quality of the company's product were false, untrue, and misleading. The company violated Article 21(1) of the Fair Trade Act. Unlawful activities were suspended and an administrative fine of NT\$150,000 was imposed pursuant to Article 41 of the same act.

The FTC indicated that, where an enterprise advertises certain product effects, it shall provide supporting medical theory or clinical testing. After investigation, the FTC discovered the following: City Noble Online Shopping advertised "Hito Master" on World TV from August 21 to 27, 2008. The following statements were made in the advertisement: "the size of a person's buttocks was 34 3/4 inches 10 minutes before and 32 3/4 inches after using Master Hito;" and "the height of a child was 143 cm before and 144 cm after using Master Hito." The company later admitted that there was no medical theory or clinical testing to support the statement; however, the product could have helped consumers to work out

and become healthy because it was a piece of fitness equipment; that is the reason why the company made the above statements. The FTC concluded that, since there was no medical theory or clinical testing to support statements in City Noble Online Shopping's advertisements, such allegations constituted false, untrue, and misleading representations.

Statistics for Administrative Remedies

I. Definition

Administrative remedies refer to, first, appeals filed pursuant to the “Administrative Appeal Act,” where one believes that an administrative decision by the central or local authority is illegal or improper and thus, damaging to its rights or benefits, and, second, to the administrative actions filed with the High Administrative Court pursuant to the “Code of Administrative Procedure,” where one disagrees with the results of the appeal.

The FTC has the authority to impose administrative decisions on enterprises that violate the Fair Trade Act. To protect those enterprises, since the implementation of the new Administrative Appeal Act and the Code of Administrative Procedure in July 2000, enterprises that disagree with the FTC’s decision shall file an appeal to the Petitions and Appeals Committee of the higher authority within 30 days since the second day on which the administrative decision is served or the announcement period expires. If such an enterprise disagrees with the result of the appeal, it may file an administrative action with the High Administrative Court within 2 months since the second day that the decision for appeal was served.

II. Statistics on Administrative Remedies

Up to the end of August 2009, the FTC had imposed 7,880 administrative dispositions. A total of 9,306 entities were subject to these dispositions, and 2,254 sought administrative remedies (24.22% of entities that were subject to FTC dispositions). In other words, one in every 4.13 entities seeks an administrative remedy for its dispositions.

From the time of the implementation of the new Administrative Appeal Act and the Code of Administrative Procedure in July 2000 to the end of August 2009, the ratio for appeals and administrative actions was 100:41; in other words, there were 41 administrative actions for every 100 appeals (see Table 1).

From the time of the implementation of new Administrative Appeal Act and the Code of Administrative Procedure in July 2000 to the end of August 2009, the Petitions and Appeals Committee of the higher authority received 1,510 cases and closed 1,449 of them. Most appeals were rejected (1,235 appeals), with a total of 125 appeals being dismissed. The number of original decisions repealed came in third place (52 appeals). Please see Table 2 for the details. If divided by types, 1,153 appeals were made against dispositions (79.6%), while 226 appeals were against cases dismissed or rejected (15.6%), and 4.8% fell in other categories. Meanwhile, the High Administrative Court closed 600 cases related to the Fair Trade Act, among which 430 cases were rejected for substantial cause (meritless, 71.1%). The Supreme Administrative Court closed 253 cases, with 139 cases being rejected for substantial cause (meritless) and 62 rejected for incomplete procedure.

Table 1 Appeals and Administrative Actions against Administrative Decisions

Unit: no. of cases; no. of firms

Time of the Original Decision	Administrative dispositions									
	Cases	Entities	Prior to July 1, 2000				After July 1, 2000			
			Petitions and Appeals Committee		Administrative Action	Petitions and Appeals Committee, the Executive Yuan		Administrative Action		
			Petitions and Appeals Committee, FTC		Administrative Court	Cases Received	Percentage of Appeals (%)	Cases Received	Percentage of Appeals (%)	High Administrative Court
Total	7,880	9,306	802	18.73						406
1992 -June 2000	3,715	4,283	802	18.73	406	192	-	-	34	18
July 2000 -Aug. 2009	4,165	5,023	-	-	-	-	1 432	28.51	551	250
July 2000 - Dec. 2000	250	421	-	-	-	-	150	35.63	70	30
2001	464	610	-	-	-	-	231	37.87	90	47
2002	436	520	-	-	-	-	163	31.35	72	29
2003	382	455	-	-	-	-	165	36.26	68	35
2004	311	336	-	-	-	-	73	21.73	30	10
2005	366	447	-	-	-	-	109	24.38	53	20
2006	565	617	-	-	-	-	168	27.23	72	37
2007	526	584	-	-	-	-	139	23.80	50	28
2008	522	592	-	-	-	-	141	23.82	40	14
Jan. 2009 -Aug. 2009	343	441	-	-	-	-	93	21.09	6	-

Note:1. The periods "prior to July 1, 2000" and "after July 1, 2000" refer to the application of the Administrative Appeal Act and the Code of Administrative Procedure.

2. The number of entities under administrative decisions includes dispositions and cases dismissed. The number of cases received refers to the appeals and administrative actions filed against a disposition or case dismissed/rejected; the number of cases received at each stage will be based on the first-time application.
3. A disposition may cover multiple enterprises or individuals. Since administrative remedies are filed by enterprises or individuals; the statistics for administrative remedies focus on the number of administrative dispositions imposed by the FTC.
4. The number of administrative remedies includes appeals or administrative actions made without a prior appeal.

Table 2 Results of Appeals

Unit: no. of cases

Year & Month	Total	Rejected	Original Decision Repealed	Dismissed	Withdrawn	Partially Dismissed, Partially Repealed	Partially Dismissed, Original Decision Partially Repealed	Original Decision Partially Repealed
Total	1,499	1,235	52	125	10	18	4	5
July 2000 -Dec. 2000	15	11	-	3	1	-	-	-
2001	265	231	10	23	-	1	-	-
2002	211	166	5	25	-	15	-	-
2003	161	133	11	13	3	1	-	-
2004	135	117	2	13	3	-	-	-
2005	103	92	2	5	2	-	2	-
2006	153	141	3	9	-	-	-	-
2007	166	147	2	16	-	1	-	-
2008	149	117	14	11	-	-	2	5
Jan. 2009 - Aug. 2009	91	80	3	7	1	-	-	-

FTC Activities in September 2009

- On September 8, the FTC held the “2009 FTC Lectures on the Fair Trade Act” at the Taichung Civil Servant and Teacher Training Center
- On September 8, the FTC invited Associate Professor Ai-e Chen of the National Taipei University Department of Law to present a speech on “From Division to Partnership Between Government and the Private Sector --- Challenges to the Division of Private Law and Public Law”
- On September 14, the FTC held the “FTC Introduction to Regulations on Real Estate Advertisements” at the Taichung Howard Hotel
- On September 25, the FTC held the “FTC Fair Trade Act Camps for Universities and Colleges in the Southern Region” at Chia Nan University of Pharmacy & Science
- On September 28, the FTC promoted the Fair Trade Act at Sheng Yu Steel Co., Ltd. (the steel industry)
- On September 30 , the FTC held the “Introduction to Trading Traps” at Tainan City Veterans’ Service Department



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FTC International Exchanges in September 2009

- On September 2, the FTC sent staff to serve as lecturers at the “Training Course on Competition Law and Policy ” in Japan.
- On September 14, the FTC joined the 1st Meeting of Working Group on "The 21st Annual Bilateral EU-Chinese Taipei Consultations"
- From September 22 to 26, the FTC sent representatives to the Regional Antitrust Workshop on Horizontal Mergers and Joint Ventures held by the OECD-Korea Regional Centre for Competition